IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 266 of 2006
With
CIVIL APPLICATION No. 11298 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UTTAR GUJARAT VIJ COMPANY LTD. AND ANOTHER
Versus
HARIBHAI CHHAGANBHAI BHARWAD

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Appearance :
MR PREMAL R JOSHI for Appellants.
MR VK SHAH for MR BK DAMANI for Respondent.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 15/12/2006

ORAL JUDGMENT

ADMIT. Mr.V.K.Shah, learned advocate waives service of admission on behalf of the respondent. With the consent of the parties, this appeal is taken up for final hearing today.

The appellants herein are the original defendants of Civil Suit No.1567/2002. Case of the plaintiff in the aforesaid suit is that he is a consumer of the defendant-electricity company and he has got electricity connection in the suit property situated in Rupal Village of Bavla taluka. The case of the plaintiff is that he is cultivating said land since last more than 25 years. It is also the case of the plaintiff that he had asked for electricity connection from the defendant company for agricultural purpose and, he was provided electricity connection from industrial feeder for farming purpose. Case of the plaintiff is that he is using said electricity supply only for the purpose of agricultural activity and that he has not got any industry. It is also the case of the plaintiff that he was provided electricity supply from industrial feeder since last 20 years. It is also the case of the plaintiff that though the defendants are required to supply electricity through industrial feeder, now they want to transfer the feeder by suppling electricity from rural feeder instead of industrial feeder. On the aforesaid grounds, the plaintiff has filed aforesaid suit for declaration and injunction. In the aforesaid suit, the plaintiff gave an application for interim injunction with a prayer that till the suit is decided, defendant may be restrained from transferring electricity supply of the plaintiff from industrial feeder to rural feeder. The aforesaid injunction application was resisted by the defendant company on various grounds.

It is the say of the defendant – company that City Civil Court at Ahmedabad has no jurisdiction to try the suit as the property in question is situated at Bavla, and, therefore, the competent Court would be Civil Judge at Bavla. It was also the case of the defendant – company that initially rural feeder was not available and only by way of temporary measure the plaintiff was given electricity connection from industrial feeder. It is also the case of the defendant that as the rural feeder is

available now, and, since the plaintiff can be given electricity at a concessional rate from said feeder, company is entitled to shift the connection of the plaintiff from industrial feeder to rural feeder.

By a very cryptic order dated 10-2-2006, learned trial Judge granted interim injunction by observing that as the plaintiff is getting connection through industrial feeder since long, the defendant – company now cannot transfer his electricity connection from industrial feeder to rural feeder. It is the aforesaid order, which is impugned at the instance of the defendant company in this Appeal from Order.

Mr.Joshi, learned advocate appearing for the electricity company submitted that even though specific point is taken about jurisdiction by the defendant, learned trial Judge has not cared to deal with the same, for which he has invited the attention of the Court to paragraph 2 of the reply to injunction application. Mr.Joshi also submitted that so far as rural feeder is concerned, it is meant for agriculturists so that the agriculturists can get electricity at a cheaper tariff and the plaintiff can also get electricity from that feeder for about eight hours in a day. Mr.Joshi further submitted that so far as industrial feeder is concerned, it is predominantly meant for industrial purpose and the consumer can get electricity for 24 hours from the said feeder so that industrial production may not be hampered for want of electricity supply. He further submitted that there is a difference in the tariff, as the tariff for electricity supply from industrial feeder is on higher side as compared to tariff in connection with rural feeder. Mr.Joshi also submitted that initially when there were no rural feeders, agriculturists used to be given connection through industrial feeder, however, as the rural feeder is available, now the plaintiff is required to be given electricity supply through rural feeder. It is submitted by Mr.Joshi that now gradually rural

feeder is made available and the farmers are being given electric supply at a cheaper rate from the said feeder. He submitted that learned trial Judge has not considered prima facie case or balance of convenience. Mr.Joshi further submitted that if the plaintiff wants to get electricity connection from industrial feeder, the company has no objection to provide the same, if the plaintiff pay the tariff fixed for industrial feeder.

Mr.Joshi also pointed out that, in the instant case, rural feeder is available since 2002 and without considering this aspect, learned trial Judge has granted injunction, as a result of that the plaintiff is enjoying 24 hours electricity supply by paying minimum charges, otherwise the plaintiff is required to pay higher rate of tariff for getting electricity though industrial feeder. It is submitted that, the industries are required to be supplied electricity through industrial feeder by charging higher tariff, who are subjected to staggering for saving electricity.

On the other hand, Mr.V.K.Shah, learned advocate for the respondent has made a feeble attempt to convince the Court that order in question may not be disturbed. He, however, submitted that he has taken instructions from his client but his client is not willing to pay tariff prescribed for industrial feeder. He further submitted that his client is interested in getting electricity supply only through industrial feeder but by paying the minimum charges prescribed for rural feeder. Mr.Shah also submitted that main grievance of his client is that the defendant company is acting in pick and choose manner and that there are many farmers, who are still getting electricity through industrial feeder though the rural feeder is in existence. Mr.Shah further submitted that the arguments which are canvassed before this Court are not canvassed by the advocate appearing for the electricity company before the trial Court.

I have heard both the learned advocates at great length and I have also gone through the order of the trial Court as well as the documents supplied by the learned advocates at the time of hearing of this Appeal from Order. In my view, the order of the trial Court is not at all sustainable. The order in question is a very cryptic order and the learned trial Judge has neither considered balance of convenience nor the question of prima facie case is considered in its proper perspective.

While deciding a question under Order 39 of the Civil Procedure Code, the Court is assigned a very important duty to find out whether prima facie case is in existence and the Court is also required to consider the question of balance of convenience. The Court is required to form an opinion on the basis of the documents on record and when the point of jurisdiction is raised by the defendants in their written statement, the Court was required to consider whether any part of the cause of action arose within the territorial jurisdiction of the concerned Court.

Apart from the aforesaid aspect, following aspects are not in dispute :

(i) The plaintiff is an agriculturist and he has been given electric connection for the purpose of his agricultural activities.

(ii) At the time when the plaintiff was given electric connection through industrial feeder, no rural feeder was in existence.

(iii) So far as the connection from rural feeder is concerned, tariff charged for such supply is very nominal as compared to the supply from industrial feeder.

(iv) Connection through industrial feeder is given for the purpose of industrial production by which electricity is supplied for 24 hours, in order to see that the production activity may not be halted for want of electricity supply.

It is required to be noted that so far as plaintiff is concerned, learned advocate Mr.Shah is not in a position to point out that for agricultural activity electricity is required for 24 hours. Mr.Shah has also fairly conceded that as the plaintiff has been given connection through industrial feeder, he is able to get electricity supply for 24 hours, even though the actual necessity for electricity is for 7 to 8 hours a day for the purpose of agricultural activities. He also conceded that at the time when the plaintiff was given electricity connection through industrial feeder, rural feeder was not in existence. Mr.Shah has also conceded that so far as industrial feeder is concerned, it is mainly meant for industrial production, however, he states that there are many farmers in the State, whom the State Government and electricity company have obliged, for the reasons best known to them, by giving electric connection through industrial feeder by charging concessional tariff as charged under the use of rural feeder. He submitted that in view of Article 14 of the Constitution of India, electricity company cannot discriminate the farmers in this manner.

In my view, order of the trial Court is not at all sustainable. The learned trial Judge has not dealt with any points nor he has considered the question of jurisdiction. It is not in dispute that so far as industrial feeders is concerned, it is mainly used for the purpose of giving electricity supply for industrial production and higher tariff is fixed for such supply, so that the factories can run for 24 hours and such industry may not be required to suffer in its production activity for want of

electricity. In the instant case, the plaintiff by paying minimum tariff wants to take benefit of 24 hours electricity supply. For transitory period, till the rural feeder is available, if the electricity company has given connection through industrial feeder by charging rates under the rural feeder, it cannot be said that any legal right is created in favour of the plaintiff to get the electricity at a cheaper rate. It seems that electricity company has also not taken any steps for changing the connection from industrial feeder to rural feeder for a considerable period. In a given case, such negligence may result into shortage of electricity for industries or it may result in frequent staggering. When there is crisis of electricity, it is the duty of the officers of electricity company to act promptly in such matters. It is required to be noted that, in the instant case, the plaintiff is not willing to pay the tariff, which is meant for industrial feeder and he wants to continue with the benefit of 24 hours electricity supply by paying nominal tariff under rural feeder.

Considering the aforesaid aspect of the matter, order of the trial Court deserves to be set aside, as the learned Judge has failed to consider the case from its proper angel. Since it is not in dispute that now rural feeder is available, which is meant for agriculturists only, insistence on the part of the plaintiff to get electricity from industrial feeder only is not proper. From rural feeder, the plaintiff can get electricity at a cheaper rate for a particular number of hours. Simply because the plaintiff was given benefit of getting electricity through industrial feeder for intervening period when rural feeder was not available, it does not give any right in favour of the plaintiff to get electricity from the same feeder by paying charges for rural feeder, especially when it was only a stop-gap arrangement till the rural feeder is made available.

By virtue of interim order, the plaintiff has continued to get the benefit under the industrial feeder since 2002, though the rural feeder was available at that time. Since the rural feeder was available since 2002, the plaintiff was required to get electricity from rural feeder, instead of that the plaintiff has continued to get electricity supply from industrial feeder by paying charges prescribed for rural feeder.

At this stage, Mr.Joshi pointed out that he is making a statement before this Court that wherever rural feeder is available, the farmers shall be subjected to conversion from industrial feeder to rural feeder so that more energy is available for industrial purpose and the farmers may continue to get electricity supply at a concessional rate from rural feeder. He submitted that process of such conversion will be completed within six months, where rural feeder is in existence. He submitted that since he is appearing for Bavla division, his statement may be considered only for that division. He submitted that he is making this statement after taking instructions from Mr.Sejpal, Executive Engineer as well as from Mr.A.G.Raval, Deputy Engineer, Bavla Division office of electricity company.

However, in my view, this has to be applied all over the State and wherever the farmers are getting electricity supply from industrial feeder even though the rural feeder is available, they may be shifted to rural feeder. Copy of this order may be sent to Chairman, Gujarat Urja Vikas Nigam to take appropriate action in this behalf, so that the grievance of the plaintiff that he is discriminated may not survive.

Since no one is required to suffer in view of interim orders of the Court, it will be open to the defendant company to take appropriate action against the plaintiff to recover the amount of difference, in the

matter of payment of tariff between rural feeder and industrial feeder since 2002, i.e., from the date on which rural feeder was available, especially when the plaintiff continued to get such benefit by virtue of interim injunction order granted by the trial Court, which is now vacated.

In view of above, this Appeal from Order is allowed. Order passed by the learned trial Judge below notice of motion in Civil Suit No.1567/2002 is quashed and set aside. Injunction application preferred by the plaintiff in Civil Suit No.1567/2002 stands dismissed. There shall be no order as to costs.

In view of the order passed in main Appeal from Order, no order on Civil Application no.11298/2006.

At this stage, Mr.Shah, learned advocate for the respondent submitted that this order may be stayed for some time as his client (respondent herein) would like to approach the Honourable Supreme Court.

In my view, when the plaintiff has no right to get electricity connection through industrial feeder and when rural feeder is available, from which the plaintiff can get electricity supply, request for staying this order is not required to be granted. Moreover, the plaintiff is getting electricity through industrial feeder by virtue of injunction order granted by the trial Court and since the rural feeder is now available, prayer for stay cannot be granted, hence, the same is rejected.

(P.B.Majmudar, J.)

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